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Human Rights Council
Thirty-ninth session
10-28 September 2018
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by The Association of the Egyptian Female Lawyers, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 September 2018]

* Issued as received, in the language(s) of submission only.

GE.18-15270(E)
1815270

Please recycle

An Overview: Women's Rights in Egypt

Political participation is the essence of influence components in political decision making. Political participation is one form of practicing political rights and duties of citizens.

Political participation for women and their contribution to opinions and variety of political life movement is indispensable matter. We cannot deny that the effective national participation of Egyptian women led to establishment of mechanisms of supporting Egyptian women. This is through including articles in the constitution of 2014 that stating equal rights for men and women. Egyptian women have achieved many important gains on the level of enabling them to decision making positions; among them are the assignment of the first female governor, the first female national security consultant for the president, the first vice-governor of the central bank, in addition to assigning 6 female vice-heads of State Cases Authority for the first time and the increase of female ministers ratio to 25% and other gains on all levels.

Moreover, on the legislative level, the law of the National Council for Women was approved as the punishment for FGM and sexual harassment was thickened, criminalizing women's deprivation from inheritance in addition to including equal rights for men and women in investment law in regard to investment opportunities and supporting small and medium enterprises, till the most important declaration in the history of Egyptian women when the president Abd El Fattah El Sisi declared 2017 to be the Year of Women in Egypt in step crowning Egypt's efforts on national, regional and international level regarding the enhancement of women's role in society.

The Year of Egyptian Women synchronized with the declaration of Egyptian women empowerment strategy 2030 which is approved by the president Abd El Fattah El Sisi to be followed in the next years to activate plans, programs and projects included in this strategy.

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1815271

Please recycle

Yemen: An Example of Human Rights Violations

The war going on in Yemen is the worst war witnessed by the state. Yemen suffers from poverty, 'slow' growth and poor facilities and services even in the period of stability i.e. before youth revolution. This war was broken out because of Al Houthi Group and some of Al Mo'tamar (Conference) Party, which belongs to the former president Ali Abd Allah Saieh who was overthrown by February 2011, after they refused the outcomes of the national dialogue. Then Sana'a was invaded and the most Yemeni lands were taken over.

During this war all rights were violated whether civil, political, economic, social or cultural rights. The war just resulted in destruction and will yield impacts which will not be removed by the next years and will threaten human rights for many years. In addition, human rights situation in Yemen witnessed severe complicated stage as the armed conflict was bloody, violent and horrible against civilians/ citizens. Al Houthi and Saleh coalition was responsible for the most violations against human Rights and Human International Law till Al Houthi Group assassinated the former president Ali Abd Allah Saleh last December and controlled the taken-over areas. Since that Al Houthi are the controller of the scene and are considered one front which run the conflict accompanied by violations against human rights. Hence Al Houthi Group is responsible for what was committed by its militias and military forces against civilians/citizens.

The violations documented by Yemeni human rights organizations and international organizations committed by all armed conflict parties represented in killing (using all means), assassination crimes, political or revenge-based eliminations against opponents and death penalty outside law. These violations included children, women and elderly especially those called in International Law "The Six Violations" against children and other violations against children and women without protections such as deportation/displacement and homes destruction. Moreover, other forms of violations included forced displacement, arbitrary detention, forced concealment and torture which resulted in the death of detained in some cases; in addition to poor conditions of prisons and detentions places established and run by number of conflict parties. Also the violations included group punishment for citizens who tried to get out of besieged cities, preventing the entrance of relief materials and abstaining the delivery of salaries of state employees the matter which violates their right to get their wages and as a result they left their jobs and searched for other jobs to earn their living for the sake of their children. In addition, the conflict parties robbed the state's revenues and funds in number of areas.

Right to Life

One of the most prominent violations witnessed by Yemen in the recent four years is the violation of the most superior right which is right to life. According to UN figures, this war led to the death of more than 15.000 people. In addition, the Yemeni Ministry of Human Rights has revealed that the total of human rights violations cases committed by Al Houthi militias from March 2015 to April 2018 reached 18.491 death cases among them 1372 children. Also the number of injured children reached 3882 from 30362 wounded. On the other hand, the children victims of mines reached 204 death cases and 307 injury cases.

Moreover, the Yemini minister of human rights Dr. Mohamed Askar has revealed the number of dead and wounded since the beginning of the Yemeni crisis saying that they reached more than 38.000 civilians varied between dead and wounded during the period from September 2014 till the end of May 2018. Dr. Mohamed Askar added that "Al Houthi militias committed crimes against humanity in Aden, Abyan, Taiz and Marib since the outbreak of Yemeni crisis". However; in its report "Thousand Days in the War", Oxifam Organization has estimated the death of about 5300 civilians since March 2015 and about 9000 injury cases.

Arbitrary Detention

According to the Yemeni Coalition for Monitoring Human Rights Violations, Al Houthi Group kidnapped and forcibly concealed 18606 people in different Yemeni governorates in the period from September 2014 to July 2017. In addition, in its annual report, the coalition revealed that the monitored kidnapping cases committed by Al Houthi militias reached 15968 while the forced concealment cases reached 2638 people in different areas in Yemen. The report also has pointed out that the kidnapped suffer severe health problems and conditions because of torture processes against them in the prisons of the militias without a legal justification behind their detention.

Crime against Childhood

Children are the most victims in such conflict especially as all parties abused children. Yet Al Houthi Group is the most prominent party in committing crimes against children. In accordance with the publicized figures by more than human

rights source, Al Houthi Group enforced 40.000 children to carry weapon. In addition, they exploited children in two ways: to balance lack of soldiers from one side and to exploit them on media level.

One of the coalition reports revealed that the number of children recruited by Al Houthi ranges from 15.000 to 20.000 children. In addition, the report assured that Al Houthi Iranian militias force children to leave schools to be in battlefields.

According to the last report by UN, there are more than 1500 children fighting in Al Houthi forces. On the other hand, the High Commission of Human Rights says that the number is much more than this. Some field surveys point out that 30% of the total Al Houthi militias are children.

A report prepared by the National Experts Team, published in March 2017, revealed that Al Houthi Group tempt children using religious slogans to recruit and train them in their camps under what they call "Quran Journey", in addition to Quran memorization centers in many Yemeni cities.

Women

In regard to violations against women's rights, they included killing, kidnapping, detention, verbal and physical assault. In addition, the violation forms include group violations against women, who represent one component in the Yemeni society, among these violations are depriving them from education and literacy, necessary medical care and safe motherhood, in addition to cutting off the poor financial dues paid for some widows every three months in many governorates. According to Oxifam report, the majority of women are the first who deprived from food or have a little. Also the report revealed that 1.1 million pregnant women or breast feeder suffer from malnutrition; the matter which leads to giving birth to babies who suffer from malnutrition. In addition, there are more than 52.000 women expose to danger of complications during birth giving. During the recent two years, violence against women incidents have been increased by more than 63%.

Moreover, since the beginning of the conflict, ratio of early marriage has been increased to reach 66% for girls less than 18 years old, as girls in the age from 8 to 10 years old may get married to decrease the number of family members. In addition, child marriage becomes source of income to feed other family members in addition to be a source of debt payment.

Torture

According to human rights reports, torture in Al Houthi prisons reached about 5.000 cases in 2017 and death cases resulted from torture reached 100 cases. All of these cases and incidents occurred in one year and there is no particular or definite number about this crime during the conflict period because of lack of interest by the Human International Organizations, however; the UN did not visit the prisons or detention places in Yemen especially areas controlled by conflict parties despite the various calls by human rights organizations and groups and kidnapped mothers' alliance to interfere. This alliance reports pointed out that Al Houthi Group used all forms and types of torture against the detained.

Freedom of Expression

The situation of press in Yemen is the worst in its history. Journalists live very complicated and worrying suppression conditions more than any other country and for the first time in its history, this is in accordance with a recent report by the Information and Rehabilitation Center for Human Rights. Journalists in Yemen become 'an agreed upon' target for all suppression forces by killing, kidnapping, physical assault, starving, rights confiscation and lack of living insurance for them.

During the last three years different human rights reports monitored tens of severe violations cases against journalists in Yemen. In addition, Yemen is classified among the worst countries in the world regarding the freedom of expression. A report by Reporters without Borders revealed that Yemen comes in the grade no. 170 from 180 countries around the world. There are about 15 journalists who are forcibly concealed in Al Houthi prisons, while Al Houthi militias did not even inform their relatives about their health conditions and whether they are alive or not. According to documented narrations, many of them have kinetic disabilities due to the systematic torture they are experienced. The case of Gamal Al Mamari, who recently released from Al Houthi prisons, represents unprecedented brutal suppression case.

In the recent months, there were very brutal torture cases experienced by journalists in the prisons in Sana'a, Zamar, Iab and different areas in Yemeni cities. In addition, some of them were used as human shields in the current conflicts and

war. Also Sana'a powers confiscated all institutions, closed all websites and suppressed all Al Houthi opponents. Besides, armed forces targeted many journalists in Aden, Taiz, Hadr Moot and Marib.

The Information and Rehabilitation Center for Human Rights declared that it seriously follow the media conditions and situation and the violations experienced against media personnel, assuring that press world in Y- -en is 'the world of fear'. So the media personnel category in Yemen is the most vulnerable category to danger and violations whether through direct suppression or through starving and living humiliation. In addition, journalists in Yemen are deprived from their economic rights and insurance which guarantee dignity living for them. Hence all journalists are vulnerable to lose their jobs and rights any time.

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Please recycle

"Terrorism Folder" – What did Qatar do in Syrian Arab Republic, Libya and Yemen?

Although the United Nations are concerned with the terrorism issue along with the procedures of how to combat it as being a crime threatens the most important and fundamental human right namely right to life, yet the states which support terrorism and use it as a tool of political and economic pressure and to implement their regional and international agendas benefit from the lack of binding international convention for all countries around the world to stop supporting and funding terrorism whether by material or moral forms.

Till now the member states in the UN are negotiating about proposal of comprehensive convention in regard to international terrorism, while they actually had approved the UN International Strategy to Combat Terrorism in 8th September 2006. This convention is in a form of decision and work plan attached with a unique international instrument which – as mentioned – will strengthen the national, regional and international efforts that aim at combating terrorism. These principles state the criminalization of terroristic crimes and to be subject to punishment according to law, litigating the committers or extraditing them, eliminating the sources of terrorism and their funders, calling the member states to take necessary procedures to stop terrorism, assuring the necessity of cooperation among all member states, sharing information supporting and help each other as much as possible regarding combating and stopping terroristic acts in addition to investigating and litigating them.

By applying these principles on Qatar, we find out that Qatar totally ignores these texts and principles. As Qatar is still supporting and financing a number of terroristic organizations in the Middle East on the top of which is Muslim Brotherhood Group. However; the reasons behind the Qatari support to terrorism have converted to be a political ideology and doctrine which have been rooted in all Qatari military, security and diplomatic institutions and even charity ones. Thus the huge financial surplus which Qatar gets (the state with low population density) has become a catastrophe for MENA because it was the reason behind the unprecedented increased terrorism in the region accompanied by the appearance of many terroristic groups with different names and titles which all are supported by Qatar with funds and weapons; the matter which pushes all Arab countries to boycott Qatar to besiege its terroristic activities. As a result, the accusations against Qatar have been increased as being a supporter of international terrorism and its obvious failure to control the Qatari funders for terroristic activities in Yemen, Syria, Iraq and Libya. In addition, Qatar failed in take strict procedures against the financial terroristic networks in it.

When Qatar did not cooperate to implement the procedures of terrorism combating applied by Arab Spring Countries, it violated the International Convention to Suppress Terrorism Fund issued by the UN General Assembly Decision no. 109/54 in 9th December 1999 (the convention was issued in 10th January 2000). The convention's preamble assures the condemnation of all terroristic acts, techniques and practices as being criminal unjustified acts wherever they are committed and whoever are the committers. These terroristic acts also include the acts which expose the friendly relations among nations and countries to danger and threaten the regional security and safety of them.

The clause no. 3 (W) of the General Assembly Decision no. 51/210, dated 17 December1996, calls all states to take steps using all suitable internal direct and indirect means to stop and prohibit funding and supporting terrorists and terroristic organizations by charity, social or cultural organizations, in addition to organizations working in illegal activities such as illegal trafficking of weapons, drugs and money extortion, including the exploitation of some people for purposes of funding terroristic activities and thinking of, when necessary, approving organizational procedures to prevent the transactions of suspected funds as being transacted for terroristic acts and addressing these transactions.

In addition, the international law obliges the member states to limit the financial flow for terrorists by addressing the matter of threat in regard to financing terrorism on local and international levels to prevent the terroristic networks from fund and safe refuge. This is done through strengthening the states' legal, organizational, financial and investigatory capacities regarding the implementation of law in addition to the judicial capacities to combat funding of terrorism in order to face the challenges represented in terrorism funding. Thus the financial systems should be better protected against misuse by terrorism funders all over the world.

Qatar has long history in non-implementation of national decisions, the most prominent of which is the decision 2368 of 2017 in regard to Daaish Group, Al Qaida Organization and all people, groups and projects related to them. This decision highlights the necessity of taking procedures towards assets freezing, travel ban and embargo imposed on

weapons. Also the decision defines the criteria of insertion in the list of people and entities related to these terroristic organizations and assures the importance of combating money laundering, terrorism funding and weapons spread.

Qatar is sheltering the leaders of Muslim Brotherhood Group which – for many reasons – has been classified as terroristic group in the Russian Federation, Egypt, Saudi Arabia, United Arab Emirates and Bahrain. Recently, after reviewing various evidences, United Kingdom of Great Britain and Northern Ireland has classified the two groups "Hasm" and "Lawaa Al Thawra" related to Muslim Brotherhood as two terroristic groups and blocked their activities; in addition to Yousef Al Qaradawy confession – one of the group members – of Osama Bn Laden and Abo Bakr Baghdadi belonging to Muslim Brotherhood Group.

Based on these previously mentioned points, Qatar has violated an important principle in the UN Strategy to Combat Terrorism which states that terroristic acts, techniques and practices with all their forms are activities aim at undermining human rights, fundamental freedoms and democracy, threaten the regional safety and security of states and shake the stability of legally formed governments. The strategy also recommends the international community to take the necessary steps to strengthen the cooperation to prevent and combat terrorism.

However; Qatar and its media channels support and disseminate the Group's ideas. In addition, they have close relations with groups such as Talban and some groups related to Al Qaida Organization. In addition, they support Al Houthi rebels in Yemen who fight governmental forces supported by Saudi Arabia and Emirates.

Qatar alleges that these groups are opponent to their governments in their countries and it support their democratic right, yet it did not investigate the evidences condemning them with terrorism which presented by the four countries for the whole world. The Qatari media bodies adopted its violence-inciting political discourse and disseminated false information against the four Arab countries. This religious inciting discourse had its effect in regard to the division of Al Sunna followers between Qatar and Arab states because of Doha support to Muslim Brotherhood Group. This group was the first and main reason in adopting the atmosphere for extremism and joining terroristic groups such as Daaish and Al Nasra Front as a number of the group members appear in Daaish videos and announce their involvement in Daaish activities. Some of them, after exiting from Libya and Syria, turned out to be a "wolf" threatening Europe and United States of America with killing and running over civilians.

Supported information with audio recordings were recently revealed about the Qatari government as it paid one billion dollars to terroristic organizations in Iraq after kidnapping 28 princes in 2015 by Said Group as the funds trans[illegible]ed to groups and members classified by the United States as being terrorists: Hazib Allah battalions in Iraq which killed Americans soldiers by putting bombs on the road side, the Gen Qasim Solimany who is the leader of revolutionary guards and who is subjected to the punishments of the United States and European Union and Tahrir Al Sham Body which was known as Al Nasra Front when it was affiliated to Al Qaida Organization in Syria. The hostages' crisis ended in April 2017 when a plane affiliated to the Qatari airlines flew to deliver fund[illegible] and get the hostages back. This is what was assured by Qatari officials although the Qatari airlines avoid commenting.

Yet, the crisis is deeper than this as it extends to the inside Qatar. When analyzing twitter accounts in Arabic, it is found out that Qatar is the biggest incubator for twitter accounts in Arabic for Daaish in the Arab and Islamic World and that 50% of the Qatar tweets are for Daaish. So if we link this with the terrorism list announced by Qatar itself and other Arab countries, we will find out that the most ratio among the accused belong to Qatar; the matter which reflects tolerant governing authorities with terroristic ideas and allowing the dissemination of these ideas among citizens without any supervision. In addition, Al Gezira Channel, owned by the Qatari government, welcomes the ideas of Sayed Qotib and Yousef Al Qaradawy. The channel also includes programs presenters belonging to Muslim Brotherhood Group who severely criticize the progressive and liberal ideas and resisting any new religious discourse through their media discourse so that the extremist ideas will be the supreme in the Arab and Islamic societies.

Qatar has long history in the list of terrorism in the UN on the top of which comes the Qatari funder and terroristic facilitator Al Sabiei who lives in Qatar. He provides the financial support to the leaders of Al Qaida Organizations before being arrested in March 2003. Since that he has provided the financial support to the leaders of Al Qaida Organizations in South Asia. In addition, he has worked with the senior facilitators of the organization to transport the extremist soldiers back to the organization to the training camps in South Asia and provides funds for them. He also was a link between Al Qaida organization and third parties in the Middle East. In 2011, Al Sabiei provided thousands of

dollars dedicated to the senior officials in Al Qaida Organization in Pakistan. His supportive funding activities for Al Qaida Organization continued till 2013.

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Human rights situations that require the Council's attention

Written statement* submitted by the Jeunesse Etudiante Tamoule, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 September 2018]

* Issued as received, in the language(s) of submission.

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Please recycle

Northern Provincial Council Resolution Calling upon the UNHRC to Refer Sri Lanka to the ICC, and Calling for UN Monitored Referendum for the Political Preference of the Tamil Speaking People**

Recalling that the March 2011 Report of the UN Secretary General's Panel of Experts on Accountability in Sri Lanka stated that there were credible allegations that war crimes and crimes against humanity were committed during the final stages of the armed conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam, and there could have been as many as 40,000 Tamil civilian deaths;

Emphasizing that according to the November 2012 Report of the UN Secretary-General's Internal Review Panel on UN Action in Sri Lanka, over 70,000 people were unaccounted for during the final phase of the war in 2009;

Recalling that the Government of Sri Lanka was a cosponsor and signatory to the Resolution 30/1 titled "Promoting reconciliation, accountability and Human rights in Sri Lanka" at the UNHRC session in Geneva in September 2015, inter-alia proposing the establishment of a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; and affirmed that a credible justice process to include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirmed in this regard the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defense lawyers, and authorized prosecutors and investigators;

Noting that as of March 2017, Sri Lanka had failed to take any significant measures to implement its commitments to Resolution 30/1, and at Sri Lanka's request at the UNHRC Session in March 2017, the Resolution 34/1 which was co-sponsored by Sri Lanka and adopted unanimously, giving 2-year extension until March 2019 for Sri Lanka to implement the Resolution 30/1;

Emphasizing that the Government of Sri Lanka has not only failed to take any meaningful steps towards implementing the Resolutions 30/1 and 34/1, but also the President, the Prime Minister, and the senior members of the government are on record to have stated that they will not fully implement the Resolutions;

Recalling that the political conflict between the Sinhalese and the Tamil speaking peoples in Sri Lanka has been escalating since the independence of the Island from the Great Britain in 1948, and the root cause of the war was the political conflict which has so far not been addressed properly despite numerous attempts;

Wherefore the Northern Provincial Council resolves that:

Since Sri Lanka is still unwilling to fully implement the UNHRC Resolutions 30/1 and 34/1, and if Sri Lanka fails to fully implement the said Resolutions before March 2019, this Council calls upon the Member Countries of the UNHRC to refer Sri Lanka to the UN General Assembly and to the UN Security Council to be referred to the International Criminal Court or to a specially created international criminal tribunal set up by the UN;
This Council calls upon the UNHRC to appoint a UN Special Rapporteur for Sri Lanka, to monitor the plight of the war affected Tamil speaking people, disappeared persons, political prisoners, continued arbitrary detention under the Prevention of Terrorism Act, presence of large un-proportionate number of Sri Lankan security forces in Tamil areas, and the occupation of private lands by the Sri Lankan security forces in the North-East region of the Island;
This Councils calls upon the UNHRC to urge UN to impose military sanctions on Sri Lanka, until substantial progress is made in this regard;

This Council calls upon all member countries of the UN to deny entry visa to Sri Lankan military personnel implicated in the war crime, and explore other avenues, including the application of universal jurisdiction as proposed by UN High-Commissioner for Human Rights in his Annual Report dated 26 February - 23 March 2018;

Since Sri Lanka has failed, and is unwilling to offer an equitable political solution to the Tamil speaking people, and failed to take adequate measures to prevent the recurrence of the past violence, this Council calls upon the member countries of the UN to conduct a UN monitored referendum in the North-East region of the Island to determine the political preference of the Tamil speaking people towards finding a permanent political solution.

**Northern Provincial Council (Sri Lanka), an NGO without consultative status, also shares the views expressed in this statement.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[07 August 2018]

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1815383

Please recycle

Report of the Special Rapporteur on the rights of indigenous peoples

Ms. Vicki Tauli-Corpuz, the Special Rapporteur on the Rights of Indigenous Peoples (the Special Rapporteur), visited Australia between 20 March to 3 April 2017 to examine the human rights situation of Aboriginal and Torres Strait Islander Peoples.

Following the visit, the Special Rapporteur prepared a comprehensive report1. She concluded that "While the [Australian] Government has adopted numerous policies to address the socioeconomic disadvantage of Aboriginal and Torres Strait Islanders, those policies do not duly respect the rights to self-determination and to full and effective participation."

She made forty-eight recommendations dealing with a range of issues, including:

- The institutional and legal framework;
- Self-determination and participation;
- Health services;
- Education;
- Employment;
- Housing;
- Incarceration and administration of justice;
- Child protection;
- Violence against women;
- Political participation; and
- Land rights and native title.

FAIRA is unaware of any official response by Australia to the conclusions and recommendations of the Special Rapporteur. By our calculations, Australia has taken no action in response a majority of her recommendations. Australia should establish a mechanism for assessing reports from all Special Rapporteurs and United Nations treaty bodies and responding to their recommendations on a publicly available website.

As limited space does not allow a detailed assessment of all of her findings and recommend... , FAIRA will concentrate on just a few of them.

Recognition of Aboriginal and Torres Strait Islander Peoples

FAIRA laments that the Australia appears unable to break free from the stranglehold of its colonial legacy and accord Indigenous peoples the recognition and respect due to its First Peoples. Many well-meaning Australians regard the situation of First Peoples as a moral issue; very few see it as a rights issue as well. Many of those who acknowledge that our land was stolen and that no attempts were made officially to treat with First Peoples, do not necessarily see our intrinsic worth as indigenous peoples with distinctive cultures, languages and beliefs; distinctive social, economic and political systems; strong links to our lands and waters and surrounding resources: and unique understanding and knowledge of our environments.

The Special Rapporteur observed that "... to truly recognize the situation of Aboriginal and Torres Strait Islanders today, there needs to be much greater public awareness of their perspectives on history and the consequences of past policies and legislation, including the long-term damage and rupture of social bonds caused by the forced removal and institutionalization of their children."

If there was a more complete understanding and recognition of First Peoples' inherent rights and valued place in the life of the nation, First Peoples would not need to campaign, seemingly in vain: for our sovereignty to be recognition in the constitution; to remain on our lands with appropriate services provided; for our right to participate equally in the political and civil processes and the economic success of the nation; for all Australian schools to teach the true history of colonisation, the destruction of many of our cultures and languages; and the theft of much our lands and resources.

1. A/HRC/36/46/Add.2

Our calls for self-determination and freedom from discrimination continue to fall on deaf ears. Or they are paid lip service to and nothing results. The various reports recommending substantive reform to the Australian Constitution in recognition of First Peoples continue to pile us on bookshelves or placed in the "too hard" basket, and yet another committee is established to consider the issue and make further recommendations.

Australia does have laws prohibiting racial discrimination, but the Australian Parliament can set aside the laws and pass discriminatory legislation (and has done so). The national laws do not criminalise hate speech or racial vilification; in fact, 2 attempts have been made since 2014 to water-down the *Racial Discrimination Act* by removing the provisions making it an offence to "offend, insult and humiliate" on the basis of race. Both attempts were defeated by the Senate, but the fact remains that one major Australian political party (the Coalition) supports weakening of existing protections.

A constitutional prohibition of racial discrimination is the only way to guarantee that future Parliaments are unable to take action which discriminates against First Peoples.

The Declaration on the Rights of Indigenous People

The Government of Australia asserts that its laws, policies and programmes are consistent with and, give effect to, the aims of the Declaration on the Rights of Indigenous Peoples (the Declaration). Yet, the Special Rapporteur concluded that, "... policies do not duly respect the rights to self-determination and to full and effective participation.".

The Special Rapporteur recommended that Australia include the Declaration in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011.

Australia has publicly committed to the Declaration, and, in doing so, accepts the right of the Aboriginal and Torres Strait Islander peoples to self-determination as Peoples. It should therefore be prepared to support legislation in the Parliament that accords with its publicly stated position.

The Special Rapporteur was critical of Australia's failure to develop a national strategy to implement the Declaration. In spite of this, no action has been taken to develop and implement, in cooperation with indigenous peoples, a national plan or strategy to achieve the ends of the Declaration as recommended.

Australia must commit to developing a national strategy in partnership with the representatives of First peoples.

National Congress of Australia's First Peoples

Since 2014, Australia has refused to resource the only existing national, representative body for Aboriginal and Torres Strait Islander peoples – the National Congress of Australia's First Peoples.

The Special Rapporteur recalled "... that the Government accepted, in the context of the universal periodic review in 2015 to "continue to support indigenous institutions that bring cohesion to communities, such as the National Congress..." noting that "... financial and political support for the Congress to operate effectively is crucial to prove the commitment of the Government to advancing indigenous rights." The Special Rapporteur expressed her concern that funding remains insufficient for the Congress to exercise its mandate fully.

The Special Rapporteur noted that "[t]he establishment of the Congress in 2010 followed extensive consultations among indigenous peoples and is in accordance with article 18 of the Declaration, which states that indigenous peoples have the right "to participate in decision-making in matters which affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions". The Declaration also affirms in its article 39 that indigenous peoples have the right "to have access to financial ... assistance from States ... for the enjoyment of the rights contained in this Declaration"."

FAIRA supports the Special Rapporteur's recommendation that the government reinstate funding to the National Congress to enable it to fulfil its mandate to advocate for and promote and protect the rights of Australia's First Peoples.

Indigenous Advancement Strategy

The Special Rapporteur observed that the Indigenous Advancement Strategy (IAS), implemented by the Australian Government in 2014, has undermined the sustainability of many Indigenous organisations and communities and that many IAS programmes was transferred to non-Indigenous organisations.

She further observed that, "the strategy has had a devastating impact on Indigenous organisations" (noting that) "it has run contrary to the publicly expressed commitments of the Government to doing things with rather than to Aboriginal and Torres Strait Islander people.

FAIRA supports the Special Rapporteur's recommendation that the IAS be revised in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, National Congress, the Indigenous Advisory Council and relevant peak Indigenous organisations.

Incarceration and the administration of justice

The Special Rapporteur noted that "The extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islander people, including women and children, is a major human rights concern. While Aboriginal and Torres Strait Islanders make up only 3 per cent of the total population, they constitute 27 per cent of the national prison population. More than half of the children in detention are Aboriginal and Torres Strait Islanders." She went on to observe that "The proportion of Aboriginal and Torres Strait Islanders continues to rise and is expected to reach 50 per cent of the overall prison population by 2020."

The Special Rapporteur made 13 recommendations, almost all of which appear to have been ignored. In Australia, the criminal justice system is administered by the state and territory governments. Australia uses this fact to explain its inability to ensure that criminal laws are respectful of human rights. This is a cop out. Much more can be done through the Council of Australian Governments process to assess the laws which impact adversely First Peoples predominately and remove them from the statute books. Much more can and must be done to provide more culturally sensitive services, including by First Peoples organisations, to alleviate the poverty and disadvantage suffered by our peoples.

FAIRA thanks the Special Rapporteur for her visit, congratulates her on her incisive observations and conclusions, and commends her report to the Australian Government and all other levels of government in Australia.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by The Death Penalty Project Limited, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 September 2018]

* Issued as received, in the language(s) of submission only.

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On the question of public opinion and the death penalty

The direction of international law on the death penalty is clear and is best illustrated by Article 6(6) of the International Covenant on Civil and Political Rights, which calls upon State parties to progressively restrict the use of capital punishment with abolition the ultimate goal.[1] However, many countries that retain the death penalty cite perceived public support for the punishment as a key barrier to progress towards abolition. These States argue that restricting or abolishing the death penalty when the majority of citizens support capital punishment risks, among other consequences, undermining public confidence in the rule of law.[2]

That these concerns are misplaced has been highlighted before the Human Rights Council: in his opening remarks to the Council's first high-level panel discussion of the death penalty in 2013, former Assistant Secretary-General for Human Rights Ivan Šimonović urged Member States not to rely on opinion polls in favour of retention, noting that public opinion can be based on misconceptions and that empirical evidence proves "the more a population was aware of facts, the less it supported the death penalty"[3]. Similarly, in her remarks opening the same panel discussion a year prior, former High Commissioner for Human Rights Navi Pillay highlighted the "undisputed historical precedent" of State practices incompatible with human rights standards being abolished notwithstanding public support for them and noted further that "leaders must show the way [on] how deeply incompatible the death penalty is with human dignity."[4]

While The Death Penalty Project welcomes any critical attention paid to the public opinion dilemma, it strongly encourages the Council to address this issue with greater urgency and scrutiny. The Death Penalty Project urges the Council to remind States of their commitments to progressive restriction of the death penalty and compliance with human rights safeguards governing implementation.[5] More specifically, we urge the Council to affirm – unequivocally – that although public opinion is to be respected, it should not determine an issue which must be dealt with on a principled interpretation of human rights in accordance with that State's commitments under international law, for two key reasons:

First, the simple 'for or against' questions that form the basis of many opinion polls overlook important nuances to public opinion which have been made clear by more rigorous studie . It is clear, for example, that responses to these questions are often informed by a lack of knowledge and misunderstanding about the nature of the death penalty. In Japan in 2015 for instance, out of 1,542 survey respondents, only nine answered all five questions on the death penalty put to them correctly.[6] Similarly, a 2012 survey found that most Malaysians report being not well informed about the death penalty in their country, and in fact the majority of survey respondents were unaware that the punishment was mandatory for certain offenses.[7] It is unsurprising, then, that increased knowledge of the death penalty, including of the inevitable problems with its administration, has been shown to cause dramatic shifts in public attitudes: in Trinidad and Tobago in 2010, when asked whether they would still favour the death penalty if evidence became available to prove that innocent people have sometimes been executed, the percentage of survey respondents who would then support the death penalty decreased from 89 to 35 percent.[8] Public opinion polls based on "for or against" questions also do not gauge strength of opinion and interest in the issue (in Malaysia in 2012 and Singapore in 2016, both countries in which the public is widely considered to support the death penalty, only eight and five percent of survey respondents, respectively, reported as being very interested in or concerned with the issue).[9] They also overlook whether preferences withstand confrontation with different scenarios (a 2012 survey in Malaysia asked respondents to judge 12 scenarios of typical cases for which the penalty is mandatory death, and only 1.2 out of 100 imposed death in all cases).[10] Perhaps most importantly, "for or against" polling does not answer whether – as is often proven to be the case – a majority of the retentionist public would still accept abolition as legitimate (a scenario true, for instance, in Zimbabwe, where 80 percent of those who answered in favour of retention in response to a 2017 survey also reported that they would accept abolition if the government so decides).[11] Overall, more rigorous investigation into the nuances of public opinion tends to show that the public are far less resistant to the abolition of the death penalty as is often portrayed.

Second, and in any event, perceptions of public opinion cannot lead the debate on the death penalty or justify departure from human rights commitments – political leadership must be exercised. Governments should not continue to cite populist sentiment as a justification for neglecting their commitments to human rights. In this regard The Death Penalty Project echoes the former Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas: "'democracy does not simply mean that the views of a majority must always prevail'....democracy must not be abused to diminish human rights, e.g. by legitimizing torture or capital punishment, even if public opinion could be invoked or manipulated to demand it".[12] Political leadership – not organic shifts in public opinion – is necessary if governments wish to restrict and ultimately abolish the death penalty. Indeed the experience internationally is that abolition has been the responsibility of political leaders exercising their judgment based on an informed and rational appreciation of the case for abolition, irrespective of public demand or even support

for it. The public invariably comes to accept abolition and support for capital punishment subsequently diminishes as the punishment comes to be regarded as outdated.

In conclusion, The Death Penalty Project respectfully urges the Human Rights Council to:

- Call on all States which retain the death penalty to ensure transparency in its use, in accordance with the safeguards on the death penalty as articulated in, *inter alia*, ECOSOC Resolution No. 1989/64 and UNCHR Resolution No. 2005/59, in order ensure informed public discourse on the practice of capital punishment.

1 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966.

2 Member States who retain the death penalty have repeatedly cited public opinion as a reason for retaining the death penalty, including before the Human Rights Council. See, for example, Human Rights Council, *High-level panel discussion on the question of the death penalty: Report of the United Nations High Commissioner for Human Rights*, 4 July 2017, U.N. Doc. A/HRC/36/27 at ¶ 25 and report from 2015 panel discussion, 16 July 2015, U.N. Doc. A/HRC/30/21 at ¶ 30.

3 Human Rights Council, *High-level panel discussion on the question of the death penalty: Report of the United Nations High Commissioner for Human Rights*, 16 July 2015, A/HRC/30/21 at ¶ 5.

4 Opening remarks of Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the High-Level Panel Discussion on the Question of the Death Penalty, available online at: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14339&LangID=E.

5 See ECOSOC Res. Nos. 1984/50, 1989/64 and 1996/15. See also ICCPR, n.1 at Art. 6.

6 Mai Sato and Paul Bacon, *The Public Opinion Myth: Why Japan retains the death penalty* (2015) at 35.

7 Roger Hood, *The Death Penalty in Malaysia: Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences* (2013) at 8-9.

8 Roger Hood and Florence Seemungal, *Public Opinion Survey on the Mandatory Death Penalty in Trinidad* (2011) at 34.

9 Ibid. at 8-9; Wing-Cheon Chan, Tan, Ern-Ser Tan, Jack Lee and Braema Mathi, "How Strong is Public Support for the Death Penalty in Singapore", *Asian Journal of Criminology* (Published online 11 October 2017) https://link.springer.com/article/10.1007/s11417-017-9260-y at Table 1.

10 Roger Hood, n.8 at 24-27.

11 Mai Sato, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?: A survey of public attitudes towards the death penalty* (2018) at 34.

12 Human Rights Council, *Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred Maurice de Zayas*, 1 July 2013, U.N. Doc. A/HRC/24/38 at ¶ 18 (quoting European Court of Human Rights, Case of Leyla Sahin vs. Turkey, Application no. 44774/98, para. 108).